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1 Q. What input did you have in this
 2 section?
 3 A. As I said before, I reviewed this
 4 section to make sure that it was consistent
 5 with my understanding of The Merger Agreement
 6 and, and accurate. And I did do that.
 7 Q. Do you know whose computers this
 8 section came off?
 9 MR. BURKE: Objection. You've
 10 asked that question a dozen times about the
 11 entire document. He's answered every single
 12 time the same way. I don't know why you need
 13 to keep asking it. Asked and answered.
 14 A. I don't have personal knowledge of
 15 that.
 16 Q. Do you have a belief?
 17 MR. MAUNDRELL: Objection.
 18 MR. BURKE: Objection.
 19 A. Yes.
 20 Q. What is your belief?
 21 MR. MAUNDRELL: Objection.
 22 A. I believe that -- I believe that
 23 it came off of KMK's computer.
 24 Q. Okay. Let's take a look at the
 25 Stock Option Agreement that's found beginning

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1 by attorneys at KMK, correct?
 2 MR. BURKE: Objection, foundation.
 3 If you know.
 4 A. Well, again, I did not write it.
 5 Provident would have been responsible for its
 6 accuracy and we would have worked with them to
 7 to make sure that the summary was correct -- or
 8 this information was correct.
 9 Q. With respect to the information
 10 contained in Defendant's Exhibit 1, did you
 11 believe that KMK had to check information that
 12 it obtained from Provident for accuracy?
 13 A. It depends on what kind of
 14 information you're talking about, but in
 15 general I would say no.
 16 Q. Okay. Was there a specific type
 17 of information that you believed KMK would or
 18 should check for accuracy?
 19 A. Not necessarily. Remember,
 20 Provident has a substantial in-house legal
 21 department who was also involved in this
 22 transaction, so if we were asked to follow up
 23 on particular sections, particular agreements
 24 or particular parts of a document, we would --
 25 we would do so, but that wouldn't necessarily

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1 on page 41, going up to page 43, about the
 2 middle of the page where it starts Provident
 3 Financial Group. Do you see that section, sir?
 4 A. Yes, I do.
 5 Q. Did someone at KMK write this
 6 section?
 7 MR. BURKE: Objection, foundation.
 8 A. I don't recall. Again, this is a
 9 section which purports to summarize the terms
 10 of the stock option agreement, and both parties
 11 to that agreement would have been involved in
 12 the preparation of this section.
 13 Q. And does that mean Provident and
 14 OHSL?
 15 MR. BURKE: Objection to form. I
 16 don't know what that means.
 17 A. It means Provident, OHSL and their
 18 respective law firms, Dinsmore & Shohl and KMK.
 19 Q. Right, I just wanted to clarify
 20 that. That's what I thought you meant. This
 21 section, Provident Financial Group, beginning
 22 on page 43, going over to page 44, that would
 23 be the responsibility of Provident, correct?
 24 A. Correct.
 25 Q. And that would have been written

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1 fall within our purview.
 2 Q. Were you asked to do that in this
 3 case?
 4 A. My recollection is there were
 5 parts of the transaction that we were asked not
 6 to be involved in.
 7 Q. What parts were they?
 8 A. Well, for example, I don't recall
 9 any involvement in seeking the approval of the
 10 Federal Reserve Board for the approval of the
 11 transaction, that I had certainly. And I don't
 12 recall -- I don't recall supervising anybody
 13 else in the firm on that -- on that topic.
 14 Q. With respect to information that
 15 came from OHSL and its counsel, what if any
 16 responsibility do you believe KMK and Provident
 17 had to check the veracity of the information?
 18 MR. GILLIGAN: You have two
 19 answers to two questions, Tim.
 20 A. Yes. I don't think that it is our
 21 responsibility to check the veracity.
 22 MR. GILLIGAN: Now, is that KMK?
 23 He asked you both Provident and KMK.
 24 A. Well, the answer would be the same
 25 in my opinion.

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1 Q. Okay. In order to perform your
 2 work on the merger transaction, was it
 3 necessary for you to have an opinion as to the
 4 sophistication of OHSL's Board members?

5 A. Repeat that question for me.

6 (Record read by Reporter.)

7 MR. BURKE: Object to the form.

8 You may answer.

9 A. No.

10 Q. Was it necessary for you to have
 11 an opinion with respect to Provident's Board
 12 members?

13 A. No.

14 Q. Did the sophistication of OHSL's
 15 Board members ever come up in discussions with
 16 Cliff Roe?

17 A. Not that I recall.

18 Q. Of the approximately 250 hours you
 19 spent on this merger transaction, approximately
 20 how much time was spent talking --

21 A. That's not what I said.

22 MR. BURKE: That's exactly right.

23 Q. Was it 200?

24 MR. BURKE: No.

25 MR. GILLIGAN: No.

1 my time on this transaction was spent in
 2 negotiation of the definitive merger agreement.
 3 And that would have involved Cliff Roe to a
 4 very significant extent.

5 But I was not involved in the
 6 preparation of the proxy statement and
 7 prospectus and, in fact, had moved on to
 8 another bank transaction very shortly after The
 9 Merger Agreement was signed.

10 Q. Which one was that?

11 A. That was Provident's acquisition
 12 of Fidelity Financial.

13 Q. And that's disclosed here in the
 14 proxy materials, correct?

15 A. I don't recall.

16 Q. Did Gary Kreider perform services
 17 in the OHSL-Provident merger?

18 A. Yes.

19 Q. What did Mr. Kreider do?

20 A. Well, Mr. Kreider served at that
 21 time as the head of our securities department.

22 He was aware that this -- the work on this
 23 transaction would be -- was going to be
 24 delegated to Mark Weiss. I think he was
 25 probably copied on some of the documents. What

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1 A. I said it was less than 250.

2 Q. Okay. I said approximately 250, I
 3 stand corrected. How would you like me -- of
 4 the total time that you billed on this merger
 5 transaction, approximately how much was devoted
 6 to conversations with Cliff Roe?

7 MR. BURKE: Objection. Calls for
 8 speculation, foundation. You may answer.

9 MR. GILLIGAN: Do you want numbers
 10 or percentages or --

11 Q. Anything is fine.

12 A. I -- I couldn't answer that
 13 question fairly. I -- I don't know. I don't
 14 know how you would even calculate such a --
 15 such a percentage or number.

16 Q. Would your billing -- I didn't
 17 mean to interrupt. Would your billing records
 18 reflect that?

19 A. I don't think so.

20 Q. Do you remember generally what you
 21 talked to Cliff Roe about?

22 A. Yes.

23 Q. Okay. Can you give me categories
 24 of what you talked to him about?

25 A. My -- my main effort and most of

1 exactly he did in the preparation of the
 2 documents, I do not recall --

3 Q. Okay.

4 A. -- if anything.

5 Q. Okay. Did David Rosenberg perform
 6 services with respect to the OHSL-Provident
 7 merger?

8 A. Yes.

9 Q. What did Mr. Rosenberg do?

10 A. Well, at that time Mr. Rosenberg
 11 was a primary contact and liaison between KMK
 12 and the Provident Bank. And he was somewhat
 13 involved in the preparation of The Merger
 14 Agreement and The Stock Option Agreement at the
 15 beginning of the transaction.

16 And I know that because he and I
 17 worked together on part of those documents.
 18 But his role subsequent to the execution of the
 19 definitive agreement, I -- I couldn't tell you.

20 I think it would have been very, very minimal,
 21 but I -- I couldn't really speak to that.

22 Q. In how many merger transactions
 23 have you had a director resign days before the
 24 definitive vote was taken?

25 MR. MAUNDRELL: Objection.

36 (Pages 138 to 141)

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1 MR. BURKE: Objection. Assumes
 2 facts not in evidence. Calls for speculation.
 3 Relevance.

4 A. Some, but I couldn't give you a
 5 number.

6 Q. Would you characterize such a
 7 circumstance as being unusual?

8 MR. BURKE: Objection.

9 MR. MAUNDRELL: Objection. Asked
 10 and answered also.

11 MR. BURKE: Absolutely.

12 A. No, not necessarily. As I said
 13 before, there are lots of reasons why people
 14 can resign from a Board.

15 Q. Can I direct your attention to
 16 page 56, the section entitled Comparison of
 17 Stockholder Rights?

18 A. Yes. I've just looked through
 19 page 62.

20 Q. Okay. Was this section written by
 21 KMK attorneys?

22 MR. BURKE: Objection, foundation.

23 A. Again, this would have been a
 24 collaborative effort.

25 Q. Who -- collaborative with

1 ownership would be if I hold securities as
 2 agent for a third party or if I hold securities
 3 in a trust capacity for a third party or as
 4 custodian or guardian for a third party. So
 5 it's a kind of indirect ownership concept.

6 Q. Okay. And Mr. Hanauer appears to
 7 be the largest OHSL shareholder, is that
 8 correct?

9 MR. BURKE: Objection. Document
 10 speaks for itself.

11 MR. GILLIGAN: As opposed to
 12 beneficial owners? Are they supposed to be one
 13 in the same?

14 A. Let me read this.

15 MR. GILLIGAN: The question is as
 16 to shareholders, and the legend indicates that
 17 these percentages are beneficial ownership.
 18 That's why I'm asking, are they supposed to be
 19 the same?

20 A. Okay. Do you want me to assume,
 21 Mike, to answer this question, whether this
 22 information is correct and complete?

23 Q. Well, let's put it this way:

24 Judging by the table, Mr. Hanauer appears to be
 25 the largest OHSL shareholder. Is that fair?

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1 Dinsmore: is that right?

2 A. Collaborative with Dinsmore,
 3 correct.

4 Q. And whose computer system did this
 5 ultimately come off, if you know?

6 A. I don't know.

7 Q. With respect to the majority of
 8 this document, whose computer system did it
 9 come off, if you know?

10 A. I think I've said several times, I
 11 do not know the answer to that question.

12 Q. Were you involved in changes that
 13 may have been made to this section?

14 A. I don't recall.

15 Q. Okay. Let me direct your
 16 attention to page 63. Do you see that?

17 A. Um-hmm, yes.

18 Q. And can you explain the concept of
 19 beneficial ownership of stock?

20 MR. GILLIGAN: As it's used in
 21 this context on that page?

22 Q. Yes, absolutely.

23 A. All right. Well, beneficial
 24 ownership is usually distinguished from legal
 25 ownership. And an example of beneficial

1 MR. BURKE: Objection. Document
 2 speaks for itself.

3 A. I -- yes. I would agree, except
 4 that there was also an option that was held by
 5 Provident pursuant to the stock option
 6 agreement, which if exercised would have made
 7 Provident the largest single shareholder.

8 Q. When was that option agreement
 9 supposed to be exercised or contemplated to be
 10 exercised?

11 A. I would have to review the
 12 document to refresh my recollection on that,
 13 Mike. I don't remember the timing, but it was
 14 a -- I just don't remember.

15 Q. Okay. How was the date July 31st,
 16 1999, selected for this table?

17 MR. BURKE: Objection, foundation.
 18 Calls for speculation.

19 A. I don't know.

20 Q. If the date had been July 30th,
 21 which was the effective day of Mr. Herron's
 22 resignation, would he have had to have been
 23 included in this table?

24 MR. MAUNDRELL: Objection.

25 MR. BURKE: Objection. Calls for

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1 speculation.
 2 A. I, I don't know.
 3 Q. Do you know if Mr. Hansuer was the
 4 only member of management who served on OHSL's
 5 Board?
 6 A. I do not recall that.
 7 Q. Do you believe generally speaking
 8 that in evaluating a proposed business
 9 combination, shareholders and Wall Street
 10 analysts often look to a member of management
 11 who also serves on the company's Board for
 12 information about a transaction?
 13 MR. BURKE: Objection,
 14 speculation.
 15 MR. GILLIGAN: Objection. That's
 16 a compound question. Would you separate it
 17 out? You asked for two different sets of
 18 groups of people.
 19 A. I don't know exactly what you
 20 mean. When you say like the phrase "looked
 21 for" or "look to," what do you mean by that?
 22 MR. GILLIGAN: Well, the -- I'm
 23 objecting, Tim. He's asking for two different
 24 people.
 25 A. Right.

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1 be a point in time when we're going to walk
 2 because of this conduct.
 3 MR. MESH: Lou, you can do that at
 4 any time.
 5 MR. GILLIGAN: No kidding, Gene.
 6 I appreciate that. I appreciate that.
 7 MR. MESH: Since you've invited
 8 comment, you can do that at any time you'd
 9 like.
 10 MR. BRAUTIGAM: Lou, the correct
 11 procedure is for me to finish my question and
 12 then you can state the word objection.
 13 MR. GILLIGAN: Go ahead.
 14 MR. BRAUTIGAM: Thank you.
 15 BY MR. BRAUTIGAM:
 16 Q. Do you believe that shareholders
 17 often look to the CEO of a company for
 18 information about a proposed business
 19 transaction?
 20 MR. MAUNDRELL: Objection. Form,
 21 foundation, speculation.
 22 MR. BURKE: Objection,
 23 speculation.
 24 A. Mike, I don't think there's really
 25 a meaningful answer to that question, because

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1 MR. GILLIGAN: It's a compound
 2 question.
 3 A. Well, I also just don't understand
 4 the question --
 5 MR. GILLIGAN: Okay.
 6 A. -- so I need help understanding
 7 it.
 8 MR. GILLIGAN: All right.
 9 Q. Do you believe that when Wall
 10 Street analysts and shareholders evaluate a
 11 proposed business combination --
 12 MR. GILLIGAN: Object. Don't
 13 answer the question. It's a compound question.
 14 Shareholders are not the same. Are you asking
 15 if the person is a Wall Street analyst and a
 16 shareholder at the same time? Otherwise you're
 17 asking two different sets of people.
 18 MR. BRAUTIGAM: Lou, you're
 19 interrupting me, really --
 20 MR. GILLIGAN: I'm trying to save
 21 you time, because I'm not going to let him
 22 answer the question.
 23 MR. BRAUTIGAM: Lou, there is a
 24 procedure.
 25 MR. GILLIGAN: There will get to

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1 people behave in lots of different ways and
 2 they look to all kinds of different reasons for
 3 advice and take into account all different
 4 factors when they're considering a transaction.
 5 And so the question really doesn't have a
 6 categorical answer.
 7 Q. Do you believe that Wall Street
 8 analysts typically look to the CEO,
 9 particularly if he's a member of the company's
 10 Board, for information with respect to a
 11 proposed business combination?
 12 MR. MAUNDRELL: Objection. Form,
 13 foundation, speculation.
 14 A. I would say no, because in the
 15 context of a public company, analysts rely on
 16 publicly filed information. They don't
 17 generally look to the CEO for information
 18 that's not otherwise publicly available.
 19 Q. Do you believe that Wall Street
 20 analysts typically look to the view of the
 21 largest shareholder in a company in evaluating
 22 a proposed business combination?
 23 A. Again, you've used the phrase
 24 "looked to" in at least three different
 25 questions, and I just don't know what that

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1 means --

2 Q. Well --

3 A. -- when you say do they rely upon.

4 Q. -- as one factor, perhaps among

5 many, in evaluating the total mix of

6 information as to whether or not they should

7 vote for or against a proposed business

8 combination?

9 MR. BURKE: Objection.

10 MR. MAUNDRELL: Object to form.

11 Foundation, speculation.

12 MR. BURKE: Same objection. Calls

13 for speculation.

14 A. They might. In this case I would

15 doubt it, frankly, because the CEO would not be

16 part of the ongoing enterprise, but -- but also

17 analysts wouldn't be concerned about this

18 anyway, but I -- I think your question is very

19 speculative.

20 Q. You mentioned in your previous

21 answer that the CEO would not be part of the

22 ongoing enterprise. What was the basis for

23 that part of your answer?

24 A. Well, the CEO of the acquired

25 company had a relatively, you know, minor

1 I would have had no way of knowing whether or not

2 Mr. Hanauer was going to continue on with the

3 acquiring entity, is that correct?

4 MR. MAUNDRELL: Objection. Form,

5 foundation, speculation.

6 MR. BURKE: Same objection. As to

7 what the shareholders of OHSL may or may not

8 have known?

9 A. Yes, I don't -- I don't know. I

10 don't recall.

11 MR. BRAUTIGAM: Okay. Let's take

12 a break for lunch.

13 (Recess for lunch.)

14 BY MR. BRAUTIGAM:

15 Q. Good afternoon, Mr. Matthews.

16 A. Good afternoon.

17 Q. Mr. Matthews, did you have lunch

18 with Mr. Gilligan and Mr. Burke?

19 A. Yes, I did.

20 Q. Did you talk about the deposition?

21 A. No.

22 Q. Did you talk about the litigation?

23 A. No.

24 Q. Have you ever sought or received

25 legal advice from Mr. Burke?

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1 long-term role, if I recall correctly. I think

2 this was maybe -- we can look at the document,

3 but I don't recall a significant role on an

4 ongoing basis, other than maybe a two or three

5 year employment agreement or something like

6 that.

7 Q. When did --

8 A. And I don't recall that.

9 Q. When did you understand that the

10 CEO of OHSL would not be offered employment

11 with Provident Bank?

12 A. Well, like I said, I do not have a

13 recollection on that. I was really speaking

14 mainly of, you know, my experience in mergers

15 and acquisitions generally, where often the

16 target company executives do not have a

17 continuing role.

18 I do not remember the role that

19 Mr. Hanauer specifically played, you know,

20 after the transaction was completed, if that's

21 who -- are you referring to Mr. Hanauer?

22 Q. Yes.

23 A. Yes, I don't recall.

24 Q. At the time of the shareholder

25 vote, October 25th, 1999, the shareholders

1 A. No.

2 Q. Does it strike you as unusual that

3 Mr. Gilligan is representing you in this

4 litigation and Mr. Burke is representing other

5 entities?

6 MR. BURKE: Objection to

7 relevance.

8 A. No.

9 Q. Why not?

10 MR. GILLIGAN: What's this have to

11 do with taking a deposition? Come on. Get on

12 with the substance of the deposition, will you?

13 This is nonsense. I've never seen such a bunch

14 of questions.

15 I've practiced law for 32 years in

16 this community. I've practiced with every ..

17 almost every lawyer around and I have never

18 seen such an exercise as this. It's

19 ridiculous. Just get on with the substance.

20 What's that have to do with the

21 substance of the case? You've got a case, ask

22 him questions about the case. Try to make your

23 case. Your case has nothing to do with who's

24 lawyering who. If you've got a personal

25 problem with somebody here, take it up with the

<p>1 Bar Association and stop wasting our time. 2 Let's go. 3 MR. BRAUTIGAM: There's a question 4 pending. 5 THE WITNESS: What's the question? 6 (Record read by Reporter.) 7 MR. BURKE: Objection to form. 8 A. Within the context of why I'm 9 here, which I presume is as a witness in the 10 case, the Thiemann case, I have asked Lou to 11 serve as my lawyer as a witness, and I've not 12 asked Jim. And so the fact that Lou is here as 13 my lawyer and Jim is here in a different 14 capacity is perfectly natural, from my point of 15 view. 16 Q. Are you familiar with the ethical 17 rules and disciplinary rules with respect to 18 the dual role of a lawyer or law firm serving 19 as both witness and advocate in litigation? 20 MR. GILLIGAN: If you've got a 21 problem, take it up with the Bar Association. 22 In fact, I challenge you to do it. And stop 23 wasting time in the deposition. He's not here 24 to answer questions on that and I'll instruct 25 you not to answer. Now, get on with the</p>	<p>Page 154</p>	<p>1 BY MR. BRAUTIGAM: 2 Q. Are you familiar with the term 3 unanimous? 4 A. Sure. 5 Q. What do you understand that term 6 to mean? 7 A. In what context are you referring? 8 It can mean a lot of different things. 9 Q. In the context of voting. 10 A. Voting as in a shareholder vote? 11 A director vote? 12 Q. Either one. 13 A. A written consent document? 14 Q. Voting in general. 15 A. So you want me to -- 16 MR. BURKE: Objection to form. 17 A. -- give you a treatise on what the 18 word means? 19 Q. Well, it doesn't have to be a 20 treatise, if you can answer the question, 21 that's all. 22 A. I think -- I think it can have 23 different meanings, but unanimous means, to me, 24 a vote without dissent. 25 Q. On the companies where you serve</p>
<p>1 deposition or we're going to leave. 2 MR. BRAUTIGAM: What's the basis 3 for that instruction? 4 MR. GILLIGAN: Oh, I thought you 5 didn't want to ever hear the basis of the -- 6 because it's got nothing to do with this 7 deposition. Nothing to do with the deposition. 8 He's not -- and you're asking him an expert 9 opinion question. 10 MR. BRAUTIGAM: It's an improper 11 instruction and you know it. 12 MR. GILLIGAN: Then take it up 13 with the Court. Take it up with the Bar 14 Association. Let's move on. Why don't you get 15 on to the merits of -- or the lack of merits of 16 your case. Deal with something substantive. 17 That's what we're here for. 18 MR. BRAUTIGAM: Are you done with 19 your speech, Lou? 20 MR. GILLIGAN: Yes. 21 MR. BRAUTIGAM: Well, if you need 22 more time, I want to give you a full 23 opportunity to make your record. 24 MR. GILLIGAN: You've heard it. 25 MR. BRAUTIGAM: Okay. Great.</p>	<p>Page 155</p>	<p>1 as a director, if -- let's say five people are 2 present for the vote and no person votes 3 against the transaction, but some people 4 abstain. Is that recorded in the books and 5 minutes of those companies? 6 MR. MAUNDRELL: Objection. 7 MR. BURKE: Objection. Calls for 8 speculation. You may answer. 9 A. Mike, it depends. I mean, I've 10 been involved in the preparation of lots of 11 minutes and that could be reflected as a 12 unanimous vote. That could be reflected in a 13 role call format in a, in an entry. You can 14 have voice votes without necessarily taking 15 role, and that can be considered a unanimous 16 vote. 17 Within my church, for example, 18 when we admit a new member we take a voice 19 vote. And if everybody says yea, it's 20 considered -- and no one says nay, it's 21 considered unanimous, even though some people 22 may not voice a nay objection. So I don't know 23 what you mean. You have to give me a context 24 in which to evaluate this. 25 Q. Okay. Let's assume for the sake</p>

<p>1 of this question that you have an OHSL director 2 and he's out of the country. 3 A. Um-hmm. 4 Q. He's not present at the meeting. 5 A. Right. 6 Q. Do you believe that his absence 7 from the meeting should be disclosed to the 8 shareholders? 9 MR. BURKE: Objection. 10 MR. MAUNDRELL: Objection. 11 MR. BURKE: Calls for speculation. 12 A. No. 13 Q. Why not? 14 A. I don't think it's material. 15 Q. Okay. And what factors did you 16 consider in coming to that conclusion? 17 A. Well, I assumed that there was a 18 quorum of the Board which did meet. You said 19 that only one director was, was missing or out 20 of the country, so I'm assuming that the 21 remaining directors are present in person and 22 prepared to vote. And, and so the fact that 23 one director happened to -- happens not to be 24 at a meeting is, is -- is not material. 25 Q. Okay. What if one director was</p>	<p>Page 158</p> <p>1 Defendant's Exhibit 1. 2 A. Yes. 3 Q. Your Board of Directors 4 unanimously approved the acquisition and 5 believes that it is in the best interest of 6 OHSL stockholders. Do you think a fair reading 7 of that states that the chairman of the Board 8 of OHSL voted affirmatively in favor of the 9 merger with Provident? 10 MR. BURKE: Objection. 11 MR. MAUNDRELL: I'll join that. 12 A. I would not necessarily infer 13 that, because the chairman may or may not have 14 been present. 15 Q. Okay. 16 A. And I would have to -- and, and -- 17 nor does this disclose whether the chairman was 18 present or voiced an objection. So I, I would 19 say I couldn't answer that question. 20 Q. Okay. Let me ask you to assume 21 for purposes of this question that the chairman 22 was present but simply did not vote. Didn't 23 vote yes, didn't vote no. 24 A. Um-hmm. 25 Q. Do you think that that sentence is</p>
<p>1 not at the meeting and the chairman of the 2 Board did not vote on the transaction at all? 3 Would you consider that to be material? 4 MR. BURKE: Objection. 5 MR. MAUNDRELL: Objection. 6 MR. BURKE: Calls for speculation. 7 Assumes facts not in evidence, form. You may 8 answer. 9 A. Again, as I said, no, not 10 necessarily. I think that you would have to 11 look at all of the facts and circumstances to 12 evaluate the materiality of any of those 13 things. If that caused a quorum not to be 14 present, then that would be an important 15 consideration, because you wouldn't have a 16 valid vote. 17 Q. Okay. 18 A. But if I am to assume a quorum is 19 present and one person recuses himself for some 20 reason -- and there can be lots of reasons why 21 people recuse themselves from participating in 22 a vote -- I don't find that to be a problem or 23 an issue. 24 Q. Okay. Let's go back to the first 25 sentence of this paragraph on page one of</p>	<p>Page 159</p> <p>1 still correct? 2 MR. MAUNDRELL: Objection. 3 MR. BURKE: Objection. Incomplete 4 hypothetical. Calls for speculation. 5 MR. GILLIGAN: Is this being asked 6 as an expert witness question? Are you asking 7 him as an expert? I mean, otherwise he's 8 speculating. Who cares what he thinks? 9 MR. BRAUTIGAM: Lou, we're doing 10 fine. 11 MR. GILLIGAN: Well, I'll instruct 12 you if you're not an expert in this and you 13 don't have enough of a foundation for an expert 14 opinion question, don't answer it -- 15 A. Well, I don't want -- 16 MR. GILLIGAN: -- because it seems 17 to me you're being held to the standard of an 18 expert witness, so I would approach the 19 question that way, Mr. Matthews. 20 A. Well, again it sounded like a 21 hypothetical to me and I'm not sure I 22 understand all of the elements of the 23 hypothetical. 24 BY MR. BRAUTIGAM. 25 Q. Okay. Well, I want you to</p>

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1 understand everything about it.
 2 A. Okay.
 3 Q. Okay. We have the OHSL Board,
 4 August 2nd, 1999, they have a meeting, a quorum
 5 is present, Cliff Roe is actually in the room
 6 and a vote is taken. And Mr. Brinker, the
 7 chairman of OHSL's Board, simply does not vote.
 8 Do you believe that that's a unanimous vote?
 9 MR. BURKE: Objection.
 10 MR. MAUNDRELL: Objection. Form,
 11 foundation.
 12 MR. BURKE: Incomplete
 13 hypothetical. How did everybody else vote?
 14 MR. GILLIGAN: And is that -- are
 15 you asking for a legal opinion?
 16 A. And did everybody else vote in
 17 favor of the transaction on that date? Am I --
 18 Q. The people who were present -- the
 19 OHSL directors who were present, except for Mr.
 20 Brinker, did vote in favor of the transaction.
 21 MR. MAUNDRELL: Well, I'll object
 22 to that.
 23 A. Did Mr. Brinker vote against the
 24 transaction?
 25 Q. No

1 have been disclosed?
 2 MR. MAUNDRELL: Objection.
 3 A. No.
 4 Q. Do you believe that the absence of
 5 Mr. McKeirnan from the meeting should have been
 6 disclosed?
 7 MR. MAUNDRELL: Objection.
 8 MR. BURKE: Objection. Asked and
 9 answered.
 10 A. No.
 11 Q. Why not?
 12 MR. BURKE: Objection. Asked and
 13 answered.
 14 A. Because the only thing that does
 15 matter is whether according to the articles of
 16 incorporation and bylaws of the company, the
 17 meeting was properly convened and a vote yea or
 18 nay on the transaction as a whole was -- was
 19 made. That's -- whether a particular director
 20 is absent from a meeting to me is not a
 21 material -- a material item.
 22 Q. Is that still true when you talk
 23 about Your Board of Directors, which I submit
 24 implies the entire Board?
 25 MR. MAUNDRELL: Objection.

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1 A. I would say that's a unanimous
 2 vote.
 3 Q. Why would you say that?
 4 A. Because of --
 5 MR. MAUNDRELL: Now you're going
 6 to argue with him? You've asked him a
 7 hypothetical question. You make up the facts,
 8 he answers your question. And then after he
 9 answers your question, you're going to argue
 10 with him?
 11 Q. I'm not arguing with the witness.
 12 A. Because in your hypothetical, all
 13 of the people who participated in the vote
 14 voted in favor of the transaction and there was
 15 no dissent. So, therefore, it is a unanimous
 16 vote and this is a correct statement.
 17 Q. Do you believe that the statement
 18 in the context that I have given you is
 19 somewhat misleading?
 20 A. No.
 21 Q. Do you believe that it's complete?
 22 MR. MAUNDRELL: Objection.
 23 A. Yes.
 24 Q. Do you believe that Mr. Brinker's
 25 lack of an affirmative vote in favor should

1 MR. BURKE: Whose Board?
 2 MR. GILLIGAN: Who is Your Board?
 3 MR. MAUNDRELL: Yes, and who does
 4 it imply this to?
 5 MR. BURKE: Objection to form.
 6 MR. BRAUTIGAM: Your Board of
 7 Directors refers to the OHSL Board.
 8 MR. MAUNDRELL: I object.
 9 MR. BURKE: Objection. Is that a
 10 question?
 11 MR. BRAUTIGAM: Yes.
 12 MR. BURKE: Objection to form.
 13 MR. BRAUTIGAM: There's a question
 14 pending.
 15 MR. BURKE: Objection to form.
 16 THE WITNESS: Repeat the question
 17 for me, please.
 18 (Record read by Reporter.)
 19 A. Is what still true?
 20 (Record read by Reporter.)
 21 MR. BURKE: Objection to form.
 22 A. Still true.
 23 BY MR. BRAUTIGAM:
 24 Q. From a point of view of corporate
 25 disclosure, would there have been anything

<p>1 wrong with the disclosure if it said on the 2 first page of Defendant's Exhibit 1. Your Board 3 of Directors voted in favor of the merger with 4 Provident Bank, but by the way, Mr. Herren 5 resigned, Mr. Hanauer changed his vote from 6 abstain to in favor of, Mr. McKeirnan was out 7 of the country, and Mr. Brinker didn't vote? 8 MR. BURKE: Objection to form. 9 Compound question. 10 A. Are you asking me to assume all of 11 those things, none of which I know to be true? 12 Q. Right. If those things were true, 13 would there be anything wrong from the point of 14 view of corporate disclosure in stating that in 15 the proxy materials? 16 MR. GILLIGAN: Again, is that an 17 expert opinion question? 18 MR. BURKE: But I will also note 19 for the record you have materially misstated 20 the facts of this case in that question. And I 21 would caution the witness upon relying upon or 22 assuming facts that are inaccurate and false. 23 MR. BRAUTIGAM: Hold on, I want to 24 address Mr. Burke's objection. 25 (Record read by Reporter.)</p>	<p>Page 166</p> <p>1 capacity that you feel comfortable with? 2 MR. BURKE: Objection to form. 3 MR. MAUNDRELL: Objection. 4 MR. BURKE: Answer what? 5 MR. BRAUTIGAM: Answer the 6 question. 7 MR. BURKE: The question was 8 phrased in terms of disclosure. 9 THE WITNESS: Are you -- are you 10 saying in the -- 11 MR. BRAUTIGAM: If I -- 12 THE WITNESS: Can there be a 13 proper vote of the Board of Directors with 14 those set -- with that set of facts for 15 purposes of making a recommendation to the 16 shareholders to approve the merger? 17 MR. BRAUTIGAM: No, that's not my 18 question. 19 THE WITNESS: Okay. 20 BY MR. BRAUTIGAM: 21 Q. My question is: Would there have 22 been anything wrong with including the 23 information that I gave you on the first page 24 or at any point in the proxy materials, meaning 25 Your Board of Directors approved the</p>
<p>1 A. Okay. Mike, I'm not an expert in 2 corporate disclosure. And in the context of a 3 disclosure in a securities matter, which is 4 what this is, I would not be qualified to 5 answer that question. 6 So if you're asking me as a 7 layperson to -- you know, what my belief or 8 opinion about that is, I want to make sure that 9 it's clear that I'm not answering this as an 10 expert -- 11 Q. Okay. 12 A. -- in disclosure. 13 Q. Okay. 14 A. Because your question -- the 15 lead-in phrase of your question was in the 16 context of corporate disclosure are -- with all 17 of these various assumptions, is this true. 18 Q. Okay. 19 A. I was answering the question in 20 the context of corporate governance and whether 21 there could be a proper vote of a Board that 22 would be in compliance with its articles and 23 bylaws. And those are two completely 24 different -- different questions. 25 Q. Okay. Can you answer it in the</p>	<p>Page 167</p> <p>1 acquisition, but one director resigned, one 2 director was out of the country, the chairman 3 of the Board didn't vote, and the chief 4 executive officer changed his vote from a few 5 days earlier from abstain to in favor. 6 MR. BURKE: Objection. 7 MR. GILLIGAN: Excuse me. Now, 8 he's already testified he can't answer that as 9 an expert. 10 Q. I heard his -- what he said. 11 A. Mike, you're asking me again about 12 disclosure. I thought you were going to talk 13 about corporate governance. 14 Q. Well, I thought you said you could 15 answer the question as a layman or words to 16 that effect. So if you can do that, I 17 understand you claim not to be an expert in 18 corporate governance. 19 MR. BURKE: No, he doesn't claim 20 to be an expert in -- 21 Q. Corporate disclosure, excuse me. 22 A. Your question was phrased in terms 23 of would that disclosure on this cover sheet be 24 proper. That's a disclosure question that I'm 25 not qualified to answer.</p>

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1 MR. GILLIGAN: That's the answer,
 2 so let's move on.

3 Q. Would Mark Weiss be qualified to
 4 answer that?

5 MR. MAUNDRELL: Objection.
 6 MR. BURKE: Objection.

7 MR. GILLIGAN: He'll be here
 8 tomorrow, go ahead and ask him that.

9 A. Yes.

10 Q. Mark Weiss would be qualified to
 11 answer that question?

12 A. Yes.

13 MR. MAUNDRELL: Objection.

14 Q. Are you familiar with the case
 15 Basic, Inc. v. Levinson, United States Supreme
 16 Court?

17 A. No.

18 Q. Are you familiar with the TSC
 19 Industries, Inc. v. Northway Industries case?

20 A. No.

21 Q. Are you familiar with the Rubin v.
 22 Schottenstein, Zox & Dunn case, Sixth Circuit?

23 A. No.

24 Q. Mr. Matthews, I hand you what has
 25 previously been marked as Plaintiff's

1 Q. August the 2nd of 1999?

2 A. Um-hmm.

3 Q. I can't do it right now. Maybe I
 4 can do it at a break.

5 A. Okay. I do not -- I do not recall
 6 seeing this document specifically. As I said
 7 here, I think that with some additional help, I
 8 would be able to recall this though.

9 Q. Okay. Are you familiar with this
 10 document?

11 MR. GILLIGAN: He just --

12 MR. BURKE: Objection. Asked and
 13 answered.

14 MR. GILLIGAN. He just answered
 15 that.

16 A. I can certainly see what it is,
 17 Mike. And again, with a little help I might be
 18 able to help you identify where it came from or
 19 the circumstances under which it was -- it was
 20 telecopied.

21 Q. Okay. Well, I'm not getting to
 22 the circumstances under which it was telecopied
 23 yet. What is this document?

24 A. Well, it appears to be an
 25 incomplete fax, missing the cover sheet, with

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1 Deposition Exhibit 20.

2 A. Okay.

3 Q. Have you seen this document
 4 before?

5 MR. GILLIGAN: Can I ask you,
 6 Mike, I'm -- I don't know anything about this,
 7 but I look through here and I see big, huge
 8 gaps in page numbers.

9 A. Right. I think I can explain
 10 that.

11 MR. GILLIGAN: Oh, okay, go ahead.

12 A. Well, first of all, there's a
 13 missing first page to this document.

14 Q. Okay.

15 A. The document -- this appears to be
 16 a fax, according to the header, sent from our
 17 office, starting with page two. So I think
 18 that the first page would probably elucidate
 19 this.

20 Q. Well, you're way ahead of me, so
 21 let me just ask my questions in my slow, basic
 22 best. You've seen this document before,
 23 correct?

24 A. Well, can you tell me what day of
 25 the week August the 2nd was?

1 selected pages from The Merger Agreement and
 2 The Stock Option Agreement showing changes that
 3 were made to the two documents.

4 It would also appear that this was
 5 very close to the conclusion of the process,
 6 where -- where we were negotiating these two
 7 documents. And again, without some additional
 8 information, I don't want to speculate as to
 9 where it came from, but I --

10 Q. Okay. Well, do you see the fax
 11 signature line on the first page and actually
 12 on each and every page?

13 MR. MAUNDRELL. On the first page,
 14 no. It says page two and the witness has
 15 already said the first page is missing.

16 MR. BURKE. Mike, this is not the
 17 first page of the document.

18 MR. BRAUTIGAM. This is what I
 19 have. This is the document, this is
 20 Plaintiff's Exhibit 20.

21 THE WITNESS. I just can't tell
 22 you then.

23 MR. MAUNDRELL. Are you going to
 24 listen to what the witness said?

25 MR. BRAUTIGAM. I listened to what

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1 the witness said, Mike. I don't have the first
 2 page. This is Plaintiff's Exhibit 20. This is
 3 the document. That's the universal document.
 4 Maybe it exists, maybe it doesn't. This is
 5 what I have.

6 MR. MAUNDRELL: Don't get me
 7 involved in universal documents, it's not my
 8 universal document.

9 MR. BRAUTIGAM: I didn't say
 10 universal document.

11 MR. MAUNDRELL: You did.
 12 BY MR. BRAUTIGAM:

13 Q. Anyway, does it appear to you that
 14 this document was sent to you from someone at
 15 KMK?

16 A. Based solely on the fact that it
 17 has a telecopier on the head of the documents,
 18 yes, but it is complete.

19 Q. Is this something that would have
 20 been sent out on or about August 2nd, 1999?

21 A. Again, based solely upon the
 22 header at the top of the page I would agree
 23 with you, but I don't know where -- I don't
 24 know whether that header is accurate or if --
 25 or not. I mean, I couldn't tell you without

1 Q. Okay. And when the Keating firm
 2 is involved in a merger, they don't write all
 3 of the necessary documents from scratch in each
 4 case, do they?

5 MR. BURKE: Objection. Calls for
 6 speculation. Overbroad.

7 A. No, not necessarily. Sometimes we
 8 do and sometimes we don't. Depends on what the
 9 need is.

10 Q. Okay. You maintain templates of
 11 sorts for use in various transactions; is that
 12 fair?

13 MR. BURKE: Objection.

14 A. Yes.

15 Q. And did you have a template for
 16 the OHSL-Provident merger where you could
 17 borrow from previously created documents?

18 MR. BURKE: A template? Objection
 19 to the -- I don't know what you mean by
 20 template.

21 MR. BRAUTIGAM: Well, the witness
 22 does, so that's what counts.

23 MR. BURKE: Objection to the
 24 question as vague and ambiguous.

25 A. Well, taking the word template to

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1 some additional information.

2 Q. Do you recognize the fax --

3 A. I'm not trying to be evasive, I'm
 4 just trying to help you.

5 Q. I understand. Do you recognize
 6 the fax number at the top of the document?

7 A. I think that's one of our law firm
 8 fax numbers, but I couldn't be -- I'm not sure.
 9 I can -- again, I can tell you if you wanted me
 10 to consult a telephone list.

11 Q. Does that appear to be the
 12 outgoing fax or the incoming fax?

13 A. I think that's the outgoing fax.

14 Q. Okay. And this document does
 15 relate to the OHSL-Provident merger, correct?

16 MR. BURKE: Objection. Asked and
 17 answered. He already told you what it is.

18 A. Yes, it appears to relate.

19 Q. Was this document on the computers
 20 or word processing system at KMK?

21 A. Well, again, first of all, it's
 22 not one document. It's stapled together as if
 23 it were one document, but, but it would appear
 24 to be excerpts from two different documents on
 25 our system.

1 mean were there prior examples of similar
 2 documents that we could draw upon in the course
 3 of drafting The Merger Agreement, yes, there
 4 were examples. How much of this document is
 5 comprised of previously prepared material
 6 versus originally prepared material, I have no
 7 recollection. Usually in a transaction of this
 8 nature, there are extensive provisions that
 9 have to be customized.

10 Q. So you take the template and you
 11 go in and customize it to a particular
 12 transaction. Is that right?

13 MR. BURKE: Objection.

14 A. Sometimes

15 Q. Is that what you did in this case?

16 A. I don't recall. I will sometimes
 17 draft these from scratch.

18 Q. Do you recall drafting the merger
 19 documents from scratch in this particular case?

20 A. I said I don't recall --

21 Q. Oh, okay.

22 A. -- one way or the other. When you
 23 say merger documents, are you talking about the
 24 agreement and plan of merger or are you talking
 25 about all of the other documents that were

<p>1 incident to this?</p> <p>2 Q. Everything combined.</p> <p>3 MR. BURKE: Objection, overbroad.</p> <p>4 A. Mike, I don't recall which were</p> <p>5 originally drafted versus which came primarily</p> <p>6 from templates.</p> <p>7 Q. Are you familiar with the Unitog</p> <p>8 transaction?</p> <p>9 A. What do you mean by "familiar</p> <p>10 with"? I'm aware of the fact that Cintas and</p> <p>11 Unitog entered into an acquisition agreement</p> <p>12 sometime I think in '98 or '99, four or five</p> <p>13 years ago. But that -- I did not work on the</p> <p>14 transaction and I'm not familiar with the</p> <p>15 terms.</p> <p>16 Q. Did Mr. Roe ever ask you to fax</p> <p>17 essentially template documents or documents</p> <p>18 that had been used before by KMK to him?</p> <p>19 A. I don't recall.</p> <p>20 Q. Let's take a look at what has</p> <p>21 previously been marked as Plaintiff's Exhibit</p> <p>22 8.</p> <p>23 A. Okay. I just note for the record</p> <p>24 that I can't really read the first page, if</p> <p>25 there's anything on it.</p>	<p>Page 178</p> <p>1 speculation.</p> <p>2 A. I do not know.</p> <p>3 Q. Do you see that on Bates number</p> <p>4 25, it appears that United Bankshares is</p> <p>5 crossed out and OHSI is written in at various</p> <p>6 times?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recognize the handwriting</p> <p>9 on this page?</p> <p>10 A. I do not. I know it's not mine.</p> <p>11 Q. Do you know if anyone at KMK sent</p> <p>12 Cliff Roe merger documents that KMK had used</p> <p>13 previously?</p> <p>14 A. I do not know.</p> <p>15 Q. Is Cliff Roe an expert in mergers</p> <p>16 and acquisitions in your mind?</p> <p>17 MR. MAUNDRELL: Objection.</p> <p>18 MR. BURKE: Objection. Calls for</p> <p>19 speculation. You may answer if you know.</p> <p>20 A. I do not know.</p> <p>21 Q. What was Mr. Roe's level of</p> <p>22 familiarity with mergers and acquisitions, in</p> <p>23 your opinion?</p> <p>24 MR. MAUNDRELL: Objection to the</p> <p>25 form and foundation.</p>
<p>Page 179</p> <p>1 Q. Could you take a few moments and</p> <p>2 review these pages to yourself, please?</p> <p>3 A. All of them?</p> <p>4 Q. I would suggest that you skim</p> <p>5 through them and then I can direct your</p> <p>6 attention to particular pages.</p> <p>7 A. Okay. I've looked through the</p> <p>8 stack.</p> <p>9 Q. Okay. Can I direct your attention</p> <p>10 to page 25 going by the Bates number, which is</p> <p>11 the number in the lower right-hand corner?</p> <p>12 A. Twenty-five or 25B?</p> <p>13 Q. Twenty-five.</p> <p>14 A. Okay.</p> <p>15 Q. Are you familiar with the</p> <p>16 transaction known as United Bankshares?</p> <p>17 A. No.</p> <p>18 Q. Did KMK ever work on a transaction</p> <p>19 involving United Bankshares?</p> <p>20 A. I don't know.</p> <p>21 Q. Let me represent that I believe</p> <p>22 these pages came from the files of Dinsmore.</p> <p>23 Do you know how this document would have gotten</p> <p>24 in Dinsmore's file?</p> <p>25 MR. BURKE: Objection. Calls for</p>	<p>Page 181</p> <p>1 A. I had not dealt with Mr. Roe in a</p> <p>2 prior transaction, so I was not familiar with</p> <p>3 his level of expertise.</p> <p>4 Q. Did you become familiar with his</p> <p>5 level of expertise in working with him on this</p> <p>6 transaction?</p> <p>7 A. Only to a limited extent.</p> <p>8 Q. Did you have a sufficient extent</p> <p>9 to form an opinion with respect to Mr. Roe's</p> <p>10 talents and abilities with respect to mergers</p> <p>11 and acquisitions?</p> <p>12 A. My -- yes.</p> <p>13 Q. What was that opinion?</p> <p>14 A. My opinion was that he was doing</p> <p>15 his job competently.</p> <p>16 Q. If Mr. Roe did not share with you</p> <p>17 material information, would that opinion</p> <p>18 change?</p> <p>19 MR. MAUNDRELL: Objection.</p> <p>20 MR. BURKE: Objection. Calls for</p> <p>21 speculation. Assumes facts not in evidence.</p> <p>22 You may answer.</p> <p>23 A. Well, when you say "material</p> <p>24 information," are you talking material</p> <p>25 information about what? And material to whom?</p>

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1 Q. Well, if Mr. Roe did not share
 2 with you information about dissent within
 3 OHSL's Board and within OHSL's management --
 4 MR. MAUNDRELL: Objection.
 5 Q. -- would you still consider him
 6 competent?

7 MR. MAUNDRELL: Objection.
 8 Misrepresentation, mischaracterization of
 9 testimony and the facts.

10 MR. GILLIGAN: Are you asking this
 11 as an expert opinion answer?

12 MR. BRAUTIGAM: I'm asking his
 13 opinion as an attorney who worked on the
 14 merger.

15 THE WITNESS: Did I --

16 MR. GILLIGAN: As an area of
 17 expertise then. So go ahead if you have enough
 18 to give an expert opinion. That's what he's
 19 asking you.

20 MR. BRAUTIGAM: No, my questions
 21 stand as I phrase them. I don't need your
 22 help.

23 MR. GILLIGAN: Let me tell you
 24 something that you apparently haven't discerned
 25 yet I have a job here, okay? I don't know

1 started earlier this morning to make that clear
 2 to you.

3 MR. BRAUTIGAM: Lou, we're doing
 4 fine. We don't need your help. We don't need
 5 your speaking objections.

6 MR. GILLIGAN: No, we're not doing
 7 fine. You see, that's the problem, we're not
 8 doing fine at all.

9 MR. BRAUTIGAM: You interrupted me
 10 again. Lou, my questions are clear. The
 11 witness can understand the questions and if he
 12 doesn't, he can tell me.

13 MR. GILLIGAN: Well, let me make
 14 something clear then. If you will not identify
 15 in your question whether you're asking him the
 16 question as an expert and asking for an expert
 17 opinion, then I'm going to instruct him not to
 18 answer, because that's the only recourse I have
 19 left.

20 MR. BRAUTIGAM: Lou, my question
 21 was clear. I'm happy to accommodate you.

22 BY MR. BRAUTIGAM:

23 Q. Mr. Matthews, my question goes to
 24 your opinion as an attorney who worked on the
 25 transaction. I'm not asking you for an expert

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1 about the merits of the case. I don't know
 2 necessarily what is relevant and what's
 3 irrelevant.

4 My objections don't go to that
 5 unless it's obvious. But Tim is here to be
 6 helpful. He's been helpful. He's answering
 7 your questions, but he is not a litigator. If
 8 you are asking a person an expert opinion
 9 question, he is entitled to know that.

10 I'm a litigator. I can't discern
 11 from your question, Mike, whether you're asking
 12 an expert opinion question or not. You're not
 13 asking him for facts he knows. You're asking
 14 him for some type of an opinion. You've
 15 established in the beginning of today that Tim
 16 feels that he has certain areas of expertise as
 17 a lawyer.

18 It is only fair for me to make a
 19 legitimate inquiry as to whether you're asking
 20 my client, this witness, an expert opinion
 21 question based upon his expertise. You can't
 22 possibly tell me there's anything wrong with my
 23 making that inquiry.

24 MR. BRAUTIGAM: Are you done?
 25 MR. GILLIGAN: That's it, but I

1 opinion in this area or that area yet. I may,
 2 just as an attorney who worked on the
 3 transaction. Okay. Are you with me?

4 A. Yes. And I think, Mike, what I
 5 haven't heard is enough information about the
 6 circumstances that you're hypothesizing may
 7 have occurred in order to provide you with an
 8 answer to that question.

9 Q. Okay.

10 A. Because it assumes facts that I
 11 don't have any knowledge about and other things
 12 that I may or may not know about. So this -- I
 13 can't answer that question.

14 Q. Okay. Fair enough. If Mr. Roe
 15 knew that Mr. Hanauer were opposed to the
 16 transaction but Mr. Roe did not share that with
 17 you, would that change your opinion as to Mr.
 18 Roe's competence?

19 MR. MAUNDRELL: Objection.

20 MR. BURKE: Objection. Assumes
 21 facts not in evidence. Misstates the record.
 22 Calls for speculation.

23 MR. MAUNDRELL: This witness is
 24 not required to answer questions in which the
 25 facts are basically false.

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1 MR. GILLIGAN: Mr. Matthews, if
 2 you can -- if you have enough to answer it,
 3 answer it. If you don't, just say you can't
 4 answer it as proposed and let's move on.
 5 That's the best I can suggest.

6 A. Right. I -- with only the
 7 information contained in your question, Mike, I
 8 don't think there's enough information, facts
 9 and assumptions for me to answer that question.

10 Q. Fair enough. What other
 11 information would you need in order to answer
 12 the question?

13 MR. MAUNDRELL: You mean other
 14 than true facts, actual facts? Other than
 15 those, you mean? You know, rather than your
 16 basic misrepresentations which you're so used
 17 to doing? Other than those?

18 MR. MESH: Is there a necessity
 19 for this --

20 MR. MAUNDRELL: Yes.
 21 MR. MESH: -- constant harping.

22 Mike?
 23 MR. MAUNDRELL: Yes, Gene, there
 24 is.

25 MR. MESH: Why don't you take it

1 true.

2 MR. MESH: Okay. In the meantime,
 3 can we move through the deposition?

4 MR. MAUNDRELL: As long as I put
 5 my objections on.

6 MR. MESH: And without criticism
 7 and without harping?

8 MR. MAUNDRELL: I'm not coaching
 9 anybody. I would suggest that you talk with
 10 your fellow counsel and tell him that when he
 11 asks questions, that the questions should have
 12 some predicate of truth to them.

13 MR. MESH: And I think he's doing
 14 just fine, Mike.

15 MR. MAUNDRELL: I know you do.
 16 And I don't.

17 MR. MESH: We have a difference of
 18 opinion.

19 MR. MAUNDRELL: That is very true.
 20 MR. MESH: You have a right to act

21 on it.
 22 MR. MAUNDRELL: Thank you, and I
 23 have.

24 BY MR. BRAUTIGAM:

25 Q. Can we have the last question read

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1 to the Court? That's what you're good at.
 2 MR. MAUNDRELL: True. Very true.
 3 Why don't you?

4 MR. MESH: Why don't I?

5 MR. MAUNDRELL: Why don't you? I
 6 knew why you don't.

7 MR. MESH: Why should I?

8 MR. MAUNDRELL: I've made my
 9 record, I'm very happy with it.

10 MR. MESH: You've been doing this
 11 since this case began.

12 MR. MAUNDRELL: I will continue
 13 when there is blatant misrepresentation of
 14 facts, period.

15 MR. MESH: You should put it in
 16 writing and put it before the Court or
 17 Magistrate

18 MR. MAUNDRELL: I hope our
 19 competent court reporter is taking down what
 20 I'm saying so it is in writing.

21 MR. MESH: And you're going to act
 22 on that, right?

23 MR. MAUNDRELL: At some point in
 24 time with this Court or some other Court or
 25 some other administrative body, true. That is

1 back, please?

2 A. That's not necessary. The fact
 3 that Mr. Roe might not have disclosed to me or
 4 to our firm circumstances about Mr. Hanauer's
 5 questions, whatever they might have been, about
 6 the transaction or reservations about the
 7 transaction would not necessarily have affected
 8 my opinion at all of his competence. And I --
 9 I stand on that without, without more.

10 Q. If Mr. Roe knew that Mr. Herron
 11 resigned in part in protest of the
 12 OHSL-Provident merger, would you have expected
 13 him to share that information with you?

14 MR. BURKE: That is an absolute
 15 mischaracterization of the record and assumes
 16 facts not in evidence. And that's -- and is
 17 directly contrary to Mr. Herron's deposition
 18 testimony in this matter. I object on that
 19 basis.

20 MR. MAUNDRELL: I join in with
 21 that.

22 A. No. I believe you told me that
 23 Mr. Herron had resigned prior to the meeting at
 24 which a vote was taken.

25 Q. Well, I believe Mr. Herron's final

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1 act as a director of OHSL was voting against
 2 continued negotiations with Provident. And I
 3 further understand that the terms of the
 4 transaction did not change.

5 MR. BURKE: Objection. That's
 6 not --

7 MR. MAUNDRELL: Now you're
 8 arguing.

9 MR. GILLIGAN: Let's move on.

10 Q. Mr. Matthews, I hand you what has
 11 been previously marked as Plaintiff's
 12 Deposition Exhibit 46 and I ask you to take a
 13 look at it. I suggest you skim through that
 14 and look for the handwritten comments, as an
 15 initial matter.

16 A. Okay. I've skimmed through it.

17 Q. Have you seen Plaintiff's Exhibit
 18 46 before, the document with the handwriting?

19 A. No.

20 Q. Do you know whose handwriting that
 21 is?

22 A. No.

23 Q. Let me represent to you that the
 24 handwriting as it appears is Mr. Ken Hanauer's
 25 handwriting. Were you aware that a document

1 MR. BRAUTIGAM: It sounded like
 2 you are.

3 MR. BURKE: That's an absolute
 4 mischaracterization.

5 MR. BRAUTIGAM: Jim, it's a little
 6 confusing with all of the KMK lawyers in the
 7 room.

8 MR. MAUNDRELL: What is confusing
 9 is your blatant misrepresentations.

10 MR. BRAUTIGAM: Would you please
 11 find the pending question?

12 (Record read by Reporter.)

13 MR. GILLIGAN: You can't answer
 14 the question as posed anyway.

15 MR. BURKE: Absolutely false.

16 THE WITNESS: That's not a
 17 question, is it?

18 MR. GILLIGAN: No, it's not. You
 19 can't answer it like that.

20 BY MR. BRAUTIGAM:

21 Q. Let me represent to you that Mr.
 22 Hanauer discussed with Mr. Roe most or all of
 23 the comments that are handwritten on this
 24 document. Would you have expected Mr. Roe to
 25 share with you Mr. Hanauer's discussion with

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1 such as this with Mr. Hanauer's handwriting
 2 existed?

3 A. No.

4 Q. I think it's fair to characterize
 5 the handwriting as issues that Mr. Hanauer had
 6 with the transaction and with the disclosure in
 7 Defendant's Exhibit 1.

8 MR. BURKE: Michael, I challenge
 9 you to find in Mr. Hanauer's deposition where
 10 he said that. He said exactly the opposite.
 11 You know that's not what he said. That's an
 12 absolute misrepresentation, Gene.

13 MR. MAUNDRELL: Gene, this is
 14 absolutely what I'm talking about.

15 MR. BRAUTIGAM: What do you
 16 believe he said?

17 MR. BURKE: I'm not going to get
 18 into a debate with you. But I'm telling you
 19 that that is an absolute mischaracterization of
 20 what he said. Find the portion of the
 21 deposition where he said that or I'm not going
 22 to allow the witness to answer that.

23 MR. BRAUTIGAM: Are you
 24 representing the witness, Jim?

25 MR. BURKE: No, I'm not.

1 respect to the merger itself and the
 2 transactional documents?

3 MR. MAUNDRELL: Objection.

4 MR. BURKE: Objection.

5 A. No.

6 Q. Why not?

7 A. Because that conversation would
 8 presumably have been privileged and I would not
 9 have been a party to it, nor would I have
 10 expected Mr. Roe to share it with me.

11 Q. If it related to Mr. Hanauer
 12 writing down material misrepresentation in the
 13 proxy materials, would you have expected that
 14 information to be shared with you?

15 MR. BURKE: Objection. Assumes
 16 facts not in evidence. That's a direct
 17 mischaracterization of Mr. Hanauer's testimony.

18 MR. MAUNDRELL: Ditto.

19 MR. BRAUTIGAM: I just want the
 20 record to be clear that at page OHSL 03187, in
 21 Mr. Hanauer's handwriting it says, misstatement
 22 of material fact.

23 MR. BURKE: Do you know where this
 24 came from, Mr. Brautigam? Because I will tell
 25 you, and I'm now looking at exactly where it

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1 came from from Mr. Hanauer's deposition.
 2 MR. BRAUTIGAM: Jim, don't point
 3 your finger at me.
 4 MR. BURKE: You are
 5 misrepresenting that that came from Mr. Hanauer
 6 and you know it didn't.
 7 MR. MAUNDRELL: You absolutely
 8 know it didn't.
 9 MR. BRAUTIGAM: I am representing
 10 that Mr. Hanauer wrote that down.
 11 MR. BURKE: And you know he's not
 12 the source of it.
 13 MR. BRAUTIGAM: I am representing
 14 that Mr. Hanauer wrote it down and that he
 15 discussed it with Mr. Roe. That's what I'm
 16 representing.
 17 MR. BURKE: Okay.
 18 MR. BRAUTIGAM: That's the extent
 19 of my representation, for the record.
 20 MR. BURKE: Okay.
 21 MR. BRAUTIGAM: Mr. Hanauer wrote
 22 it down, Mr. Hanauer discussed it with Mr. Roe.
 23 That's the extent of my representation.
 24 MR. BURKE: Okay. And you know
 25 that that was not from Mr. Hanauer, nor were

1 Board or other officers of OHSL, as well as
 2 other members of his law firm, to have
 3 evaluated these various comments and disposed
 4 of them accordingly.
 5 Q. If Mr. Roe became aware of the
 6 material misrepresentation in the proxy
 7 materials, would you have expected him to share
 8 that with you in some fashion?
 9 MR. MAUNDRELL: Objection. Calls
 10 for speculation and a legal conclusion.
 11 A. Prior to the vote of the
 12 shareholders?
 13 Q. Yes.
 14 A. Prior to the finalization of the
 15 proxy or after it?
 16 Q. At any point up to and including
 17 December 3rd, 1999.
 18 MR. MAUNDRELL: Objection.
 19 A. And in his opinion, are you
 20 talking about if Mr. Roe had reached a
 21 conclusion that there was a material
 22 misrepresentation in the proxy?
 23 Q. Yes.
 24 A. I would think that he would share
 25 that with us.

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1 they his thoughts. They were someone else's
 2 thoughts, correct?
 3 MR. MAUNDRELL: And that's a fact.
 4 MR. BRAUTIGAM: I don't agree with
 5 that entirely. Anyway, can I have my question
 6 read back, please?
 7 (Record read by Reporter.)
 8 MR. BURKE: Same objection,
 9 mischaracterizes the facts.
 10 MR. MAUNDRELL: Ditto.
 11 A. Not necessarily.
 12 BY MR. BRAUTIGAM:
 13 Q. If you had known this document
 14 existed, would you have wanted to discuss it
 15 with someone?
 16 MR. MAUNDRELL: Objection.
 17 MR. BURKE: Objection.
 18 A. No, not necessarily. Again, you
 19 told me that this is a document that was
 20 communicated to Mr. Roe by his client or by a
 21 representative of his client. And I would not
 22 have expected these matters to have been
 23 discussed or disclosed to me.
 24 I would have expected that Mr.
 25 Roe, in consultation with other members of the

1 Q. Are you aware that a federal Judge
 2 has reached the conclusion that there may be
 3 material misstatements in the proxy materials
 4 and registration statement?
 5 MR. BURKE: That's not --
 6 A. I'm not aware of what any Judge
 7 may have concluded in this case.
 8 MR. MAUNDRELL: That is a false
 9 statement totally.
 10 MR. GILLIGAN: He's answered
 11 anyway.
 12 MR. BRAUTIGAM: Let's take a short
 13 break.
 14 (Brief recess.)
 15 BY MR. BRAUTIGAM:
 16 Q. Okay. Let's take a look at what
 17 has been previously marked as Plaintiff's
 18 Exhibit 28. It's hard to read, but it is 28.
 19 A. Do you want me to read this?
 20 Q. Why don't you take a look at it
 21 and I can direct your attention to certain
 22 paragraphs.
 23 A. Okay. Which paragraphs?
 24 Q. Well, why don't you read it
 25 yourself, starting on page 17.

50 (Pages 194 to 197)

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1 MR. BURKE: Objection, foundation.
 2 Document speaks for itself. While he's reading
 3 that, Mike, I will note for the record that
 4 starting at page 153, about line 13 or 14 of
 5 Mr. Hanauer's deposition, proceeding through
 6 page 165 or 166 is a detailed discussion of the
 7 source of those comments and makes it very
 8 clear that some of the questions that you
 9 previously posed mischaracterized the record as
 10 far as Mr. Forrester being the source of those
 11 comments and Mr. Hanauer's opinion of them. So
 12 I'll just note that for the record that that's
 13 where you can find the correct testimony.

14 MR. BRAUTIGAM: Well, thank you
 15 for sharing. I do not believe that I
 16 misrepresented the record. I did not intend to
 17 misrepresent the record. It's a thousand pages
 18 of Hanauer's deposition and I believe that I
 19 stated clearly that Mr. Hanauer wrote down
 20 these comments, which is correct. And Mr.
 21 Hanauer discussed the majority, if not each and
 22 every one, with Mr. Roe. That was my
 23 representation and I believe it is correct.

24 MR. MESH: Is there a question
 25 pending?

1 speculation on a document he's never seen
 2 before. No foundation.

3 MR. MAUNDRELL: In addition, this
 4 has been asked and answered at least three
 5 times by this particular witness in perhaps
 6 different phraseology, but the exact same
 7 point.

8 MR. GILLIGAN: Well, it's --
 9 you're basically putting him in a position of
 10 rendering an expert opinion and testimony that
 11 is contrary to a holding of the Judge in this
 12 case. That's what you're asking him to do.

13 I don't think that's appropriate.
 14 Why put this man in that position? I mean,
 15 you're giving him a decision by the Judge,
 16 which is the law of this case, and asking him
 17 to disagree with the Judge or agree with the
 18 Judge? That's totally unfair. That's
 19 improper. I instruct him not to answer.

20 MR. BRAUTIGAM: And what's the
 21 basis of the instruction?

22 MR. GILLIGAN: I just gave it to
 23 you.

24 MR. BRAUTIGAM: It's unfair and
 25 improper?

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1 MR. BRAUTIGAM: No, he's reading.
 2 MR. BURKE: He's reading the

3 12(B)(6) decision.

4 MR. MESH: All right, excuse me.

5 THE WITNESS: Okay. I've skimmed
 6 up to page 24, which is the next section.

7 MR. BRAUTIGAM: Okay.

8 THE WITNESS: Do you want me to
 9 read beyond that?

10 MR. BRAUTIGAM: No.

11 BY MR. BRAUTIGAM:

12 Q. Can I direct your attention to
 13 page 20? Toward the bottom of the page,
 14 there's a section three, Unanimity of OHSL's
 15 Board. There's a sentence that begins in the
 16 extreme right. Therefore, the Court finds at
 17 least at the pleading stage that a reasonable
 18 shareholder might find dissent among the Board
 19 of Directors important to the mix of
 20 information available.

21 Now, do you agree with that part
 22 of the sentence, that a reasonable shareholder
 23 might find dissent among the Board of Directors
 24 important to the mix of information available?

25 MR. BURKE: Objection. Calls for

1 MR. GILLIGAN: Yes.

2 MR. BRAUTIGAM: That's not an
 3 appropriate basis.

4 MR. GILLIGAN: Great. Take it to
 5 the Bar Association and take it to the Judge.
 6 I've asked you to do that, please do. And
 7 don't you ever, ever again accuse me of
 8 unethical conduct and don't make an ad hominem
 9 comment about me when I ask to see a document,
 10 that I haven't prepared for the deposition. No
 11 one in 32 years has ever accused me of any of
 12 those things. Nobody has done that, and I'll
 13 tell you that right now.

14 MR. MESH: Both sides

15 MR. GILLIGAN: You, Mr. Mesh, know
 16 that. And that's nonsense, so you either get
 17 this guy straightened out or I will walk out of
 18 here. Don't you make any ad hominem remarks
 19 about --

20 MR. MESH: Lou, we've had a few
 21 from you.

22 MR. GILLIGAN: I don't care, Gene,
 23 this is me. This is a personal attack and
 24 remarks about me.

25 MR. MESH: This whole case has

<p>1 been full of that. It should be out. 2 MR. GILLIGAN: You hear what I 3 have to say. 4 MR. BURKE: I second that, Gene. 5 MR. MESH: And I personally 6 apologize to you for anything that would 7 resemble an aspersion on you, because I know 8 the -- 9 MR. GILLIGAN: Did you hear the 10 comment he made when you walked out of the 11 room? 12 MR. MESH: No, I did not hear it. 13 MR. GILLIGAN: Well, that's what 14 he made the comment on, so I have instructed 15 him not to answer. Let's move on. 16 MR. BRAUTIGAM: I want the record 17 to reflect that you're yelling, screaming and 18 pounding on the table. 19 MR. GILLIGAN: I did. I banged my 20 hand on the table and raised my voice, 21 absolutely. 22 MR. BRAUTIGAM: And you pointed 23 your finger at me. 24 MR. GILLIGAN: Yes, I did. And I 25 told you not to do that.</p>	<p>Page 202</p> <p>1 questions and I'll take them as they come. If 2 you do it on the same basis that you just did, 3 I'll instruct him not to answer. 4 MR. BRAUTIGAM: Well, can we skip 5 this meaningless exercise then and move on to 6 another document? 7 MR. GILLIGAN: Do whatever you 8 want. 9 BY MR. BRAUTIGAM: 10 Q. Put that document away. I'm 11 handing you what has been previously marked as 12 Plaintiff's Exhibit 42 and I ask you to take a 13 look at it. 14 A. Okay. I've briefly paged through 15 it. 16 Q. Have you seen this document 17 before? 18 A. Yes. 19 Q. Are you familiar with it? 20 A. At the present time I am not. 21 Q. Do you recognize it? 22 A. Yes. 23 Q. What is Plaintiff's Exhibit 42? 24 A. It looks like an interim 25 distribution of the form S-4 while it was in</p>
<p>1 MR. BRAUTIGAM: I want the record 2 to be clear that I did not make any personal 3 attacks on you in any way. 4 MR. MAUNDRELL: That's a lie. 5 MR. BURKE: That's not true. You 6 were off the record, but that is not true. 7 MR. BRAUTIGAM: I disagree with 8 your comments, Mr. Burke, but are not surprised 9 that you agree with your partner. 10 MR. BURKE: Let's move on, please, 11 Mr. Brautigam. 12 BY MR. BRAUTIGAM: 13 Q. Mr. Mathews, if I continue to ask 14 questions on this order, are you going to 15 continue to answer them? 16 MR. BURKE: Objection to form. I 17 don't know what you're talking about. 18 A. If I'm instructed on a particular 19 question not to answer it, I will follow the 20 advice of my question. 21 MR. BRAUTIGAM: Mr. Gilligan, if I 22 continue to ask questions with respect to this 23 order, are you going to instruct him not to 24 answer those questions? 25 MR. GILLIGAN: You ask the</p>	<p>Page 203</p> <p>1 the drafting stage. 2 Q. What is a form S-4? 3 A. It's a type of registration 4 statement. 5 Q. And what is being registered? 6 A. Provident securities. 7 Q. And were these the Provident 8 securities -- 9 A. PFGI securities, actually. 10 Q. And were these the PFGI securities 11 that were used to compensate the OHSL 12 shareholders for their stock if the merger were 13 approved? 14 A. Yes. 15 Q. There's a distribution list on the 16 second and third page. Do you see that? 17 A. Yes. 18 Q. What is the purpose of this 19 distribution list? 20 A. To put the document in the hands 21 of people that would have an interest or need 22 to review it. 23 Q. Was it understood that the people 24 on the distribution list would review the 25 documents that were attached?</p>

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1 A. In, in pertinent part, yes.
 2 Q. Okay. What was Mr. Carey's role
 3 with respect to the merger transaction in
 4 general?

5 A. Mr. Carey was the executive vice
 6 president and chief financial officer of
 7 Provident Bank and would have been familiar
 8 with, you know, certain of the information that
 9 was provided in the document, including the
 10 financial information.

11 Q. What was Mr. Magee's role in this
 12 document?

13 A. Mr. Magee was at that time, I
 14 believe, the senior counsel in-house for the
 15 Provident Bank, general counsel. And he is the
 16 -- he is the individual who engaged us to
 17 assist with the transaction in the first
 18 instance.

19 Q. What was Mr. Farrenkopf's role in
 20 the transaction?

21 A. John Farrenkopf participated in
 22 various aspects of the transaction, including a
 23 number of the due diligence responsibilities
 24 for the bank.

25 Q. What is due diligence?

1 company prior to consummating a merger.
 2 KMK also looked at the good
 3 standing of the respective organizations of the
 4 companies -- there are, I think, three or four.
 5 I don't recall exactly how many, different
 6 corporate enterprises that were involved in the
 7 transaction. I know there was a parent, a
 8 subsidiary, and at least one other company.

9 I don't remember if there were
 10 more than three, but we would have examined
 11 state records to determine whether those
 12 companies were in good standing so that our
 13 merger could be effectuated properly.

14 We would have made inquiries to
 15 counsel for OHSL regarding the matters required
 16 for disclosure in the proxy statement and
 17 prospectus, although I was not personally
 18 involved in that process, but those are some of
 19 the kinds of things that we would have done as
 20 part of our diligence.

21 Q. I notice that there is a provision
 22 in The Merger Agreement for an exchange of
 23 information between OHSL and Provident. Does
 24 that sound familiar to you?

25 A. Yes.

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1 A. Due diligence is a process by
 2 means of which a party to a transaction learns
 3 information that, you know, that is relevant to
 4 the way the transaction may be structured or
 5 concluded.

6 Q. Did KMK undertake due diligence in
 7 this case?

8 MR. BURKE: Objection. Vague,
 9 ambiguous, overbroad.

10 A. Some.

11 Q. What due diligence did KMK
 12 perform?

13 A. KMK would have, or did examine the
 14 structure of the target company, which was a
 15 parent subsidiary company, so as to become
 16 informed as to how to structure the transaction
 17 in a way that would, would hopefully comply
 18 with Section 368 of the Internal Revenue Code
 19 and make the transaction a tax-free
 20 reorganization.

21 In addition, KMK would have been
 22 involved in -- or was involved in the process
 23 of, you know, negotiating and discussing issues
 24 with counsel to OHSL that would have been, you
 25 know, important issues to confirm about the

1 Q. And does it specifically call for
 2 access to the Board minutes of the respective
 3 companies?

4 A. I don't recall. It might have,
 5 but I don't recall.

6 Q. Is this common to find in such
 7 merger agreements?

8 MR. BURKE: Objection. Asked and
 9 answered.

10 A. Common, yes.

11 Q. Why is it common to find in merger
 12 agreements?

13 MR. BURKE: I'm sorry, can you
 14 read that back, please?

15 (Record read by Reporter.)

16 MR. BURKE: Objection. You may
 17 answer it.

18 A. Well, there's almost always in an
 19 acquisition agreement a provision that permits
 20 an acquiring company to have access to
 21 information about the other company on a wide
 22 range of topics. And depending on the nature
 23 of the transaction, there may be deeper or not
 24 quite as deep inquiries into a whole, large
 25 number of areas, such as, you know, how the

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1 employee benefits are structured, whether
 2 there's outstanding litigation.

3 There may -- there may be -- an
 4 acquirer might want to physically inspect
 5 assets of the company if the physical assets
 6 are important. They might want to read the
 7 contracts relating to the company. There are a
 8 number of things. And so generally speaking,
 9 you would have a provision in an acquisition
 10 document that would permit an acquirer to have
 11 access to the target company's books, records,
 12 physical assets, plants, facilities, contracts,
 13 corporate records, and things of that nature.

14 Q. Did this merger close with
 15 litigation pending against Provident?

16 A. I don't know.

17 Q. Is it common to close a merger
 18 with litigation pending?

19 A. It happens. I, I -- I would say
 20 it's not common.

21 Q. Have you ever done it at any point
 22 in your career other than this case?

23 MR. BURKE: Objection, overbroad.
 24 Calls for speculation. Assumes facts not in
 25 evidence. You may answer.

1 talking about litigation against the merger
 2 transaction itself.

3 A. I would say that's relatively
 4 uncommon, but it does happen.

5 Q. Okay. Did you discuss with anyone
 6 whether or not the merger should close with
 7 litigation pending in this case?

8 MR. BURKE: Objection.

9 MR. GILLIGAN: If as an attorney
 10 in dealing with your clients on attorney-client
 11 privilege, then don't disclose the answer --
 12 don't answer the question.

13 A. I did not. I had no such
 14 discussions.

15 Q. What was Mr. Richard Hanebutt's
 16 role in this transaction?

17 A. Mr. Who?

18 Q. Hanebutt, lower left.

19 A. I don't recall.

20 Q. What was Mr. Robert Litzinger's
 21 role in this transaction?

22 A. I don't remember.

23 Q. What was Tony Stollings' role in
 24 this transaction?

25 A. Tony is in the finance department.

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1 A. Yes.

2 Q. Approximately how many times?

3 A. Probably or four or five.

4 Q. In this particular case, were
 5 there ever any discussions as to whether or not
 6 this transaction should close with litigation
 7 pending?

8 MR. BURKE: Objection to the
 9 extent it calls for attorney-client privileged
 10 information.

11 A. Now, what kind of -- let me back
 12 up. What kind of litigation pending are we
 13 talking about here? Because there are many
 14 transactions closed with the target company
 15 being involved in some litigation. I took your
 16 question to mean that we're talking about
 17 litigation concerning the transaction itself.

18 Q. Yes. That's correct.

19 A. And that's the context in which I
 20 answered it. But there are many situations in
 21 which you have litigation pending against one
 22 or both of the companies and you close. And I
 23 would say that's extremely common.

24 Q. Well, I'm not talking about a slip
 25 and fall case or a car accident type case. I'm

1 of the bank. And he reviewed some of the
 2 financial information, both being provided by
 3 Provident as well as OHSL Financial
 4 information.

5 Q. What was Ken Hanauer's role in the
 6 transaction?

7 MR. BURKE: Objection. Calls for
 8 speculation. You may answer.

9 A. I didn't have any direct contact
 10 with Mr. Hanauer.

11 Q. Do you have an understanding of
 12 what the CEO of the target company's role is in
 13 effectuating the merger?

14 MR. BURKE: Objection. Calls for
 15 speculation. Relevance.

16 A. You mean as a general matter?

17 Q. Yes.

18 A. Not in this specific instance?

19 Q. Yes.

20 A. Yes.

21 Q. Okay. What is your understanding
 22 of that role as a general matter?

23 A. Well, I've -- like other executive
 24 officers in the transaction, if the Board of
 25 Directors has undertaken to engage in a

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1 transaction, the officers would be there to
 2 serve to facilitate the transaction. And they
 3 would be -- have a responsibility to the
 4 company to, to comply with the directions of
 5 the Board of Directors and to cooperate as the
 6 contract requires for the exchange of
 7 information. And there may be other roles,
 8 too, but those are some of the roles.

9 Q. Did you ever learn from any source
 10 that Mr. Hanauer was not fully cooperating in
 11 effectuating the merger?

12 A. No.

13 Q. If Mr. Hanauer did not believe
 14 that this transaction was in the best interest
 15 of OHSL shareholders, do you believe that he
 16 had an obligation to tell someone about his
 17 position?

18 MR. BURKE: Objection. Asked and
 19 answered at least half a dozen times.

20 MR. MAUNDRELL: Objection.

21 MR. BURKE: Calls for speculation.

22 A. I can't speak as to his legal
 23 obligations. That would be something that
 24 maybe someone more familiar with his
 25 circumstances could tell you.

1 Q. Did you negotiate personally with
 2 Mr. Moritz?

3 A. No.

4 Q. You did testify that you
 5 negotiated with Cliff Roe, correct?

6 A. Yes.

7 Q. And do you know who Cliff Roe
 8 represented?

9 A. Yes.

10 Q. Who did he represent?

11 A. I understood him to represent OHS
 12 Financial.

13 Q. OHSL?

14 A. Or OHSL Financial, right.

15 Q. That's the parent company, is that
 16 correct?

17 A. Right.

18 Q. And did Mr. Roe represent the
 19 directors of OHSL?

20 MR. BURKE: Objection. Calls for
 21 speculation.

22 A. I did not understand -- I did not
 23 understand him to represent the directors, no.

24 Q. Did anyone represent the directors
 25 of OHSL in this merger, as far as you know?

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1 Q. What was the role of McDonald
 2 Investments in this transaction?

3 A. That was the investment banking
 4 firm hired by OHSL to represent them in
 5 connection with the transaction to solicit
 6 interest in OHSL and to render a fairness
 7 opinion in connection with the transaction.

8 Q. And soliciting interest is
 9 sometimes known as shopping a company?

10 A. Yes.

11 Q. And what was Mr. Crowley's
 12 particular role in effectuating the merger?

13 A. Beyond what I've already said?

14 Q. Well, you talked about McDonald
 15 Investment's role. Did he have a particular
 16 role within the rubric of McDonald's?

17 A. I don't really know what his, if
 18 he -- I don't -- if your question is, did he
 19 have distinct responsibilities within McDonald
 20 that were different from, from Jeff Moritz?

21 Q. Right.

22 A. I don't know.

23 Q. Okay. Did you negotiate
 24 personally with Mr. Crowley?

25 A. No.

1 MR. BURKE: Objection. Calls for
 2 speculation. Assumes facts not in evidence,
 3 foundation.

4 A. I do not recall.

5 Q. What was Mr. Hertlein's role in
 6 this merger?

7 A. My understanding was that he was
 8 involved on the -- in some of the securities
 9 laws aspects of the transaction as distinct
 10 from The Merger Agreement itself.

11 Q. When you say "some of the
 12 securities laws," which ones are you referring
 13 to?

14 A. Well, just as -- just as when the
 15 acquisition document was completed and signed,
 16 I stepped aside from the transaction and Mark
 17 Weiss and others in our securities department
 18 worked on it, it was my impression that Cliff
 19 Roe had similarly delegated to Mr. Hertlein
 20 responsibility for handling some of the
 21 securities aspects of the transaction.

22 Q. So would it be fair to say that
 23 you were involved more heavily before August
 24 2nd, 1999, and then you handed off the
 25 finalization of the merger to Mark Weiss in

55 (Pages 214 to 217)

<p>1 large part?</p> <p>2 A. No. I don't think that's exactly</p> <p>3 correct, but the degree of my involvement did</p> <p>4 change dramatically after Mark became involved,</p> <p>5 because the preparation of the proxy statement</p> <p>6 and prospectus was a matter within his</p> <p>7 expertise and not mine. And so from the</p> <p>8 standpoint of that particular part or phase of</p> <p>9 the transaction, he was more heavily involved,</p> <p>10 much more so than I.</p> <p>11 Q. Did Mark Weiss work with Cliff Roe</p> <p>12 or Charles Hertlein extensively in the</p> <p>13 preparation of the proxy materials?</p> <p>14 MR. MAUNDRELL: Objection. Form,</p> <p>15 foundation.</p> <p>16 A. Yes.</p> <p>17 Q. Was he the person with the overall</p> <p>18 responsibility -- he meaning Mark Weiss -- for</p> <p>19 finalizing the proxy materials and registration</p> <p>20 statement?</p> <p>21 MR. BURKE: Objection. Calls for</p> <p>22 speculation. He'll be here tomorrow.</p> <p>23 A. No. I think that it was a</p> <p>24 collaborative effort. I believe I've testified</p> <p>25 to that previously, that this was an effort</p>	<p>Page 218</p> <p>1 capacity, he was there to consult with if</p> <p>2 questions came up.</p> <p>3 Q. Okay. I think I've asked you</p> <p>4 about the remaining KMK attorneys. Could I</p> <p>5 direct your attention to page 48 of the</p> <p>6 document, please, where it says the number of</p> <p>7 directors?</p> <p>8 A. Right. Part of mine is obscured</p> <p>9 with a black mark.</p> <p>10 Q. Right. Well, the part that I'm</p> <p>11 interested in is below that.</p> <p>12 A. Okay.</p> <p>13 Q. The last sentence of the second</p> <p>14 paragraph in that section says, The OHSL Board</p> <p>15 of Directors has set the current number of</p> <p>16 directors at eight.</p> <p>17 A. Um-hmm.</p> <p>18 Q. Does that mean that the bylaws of</p> <p>19 the OHSL provided for eight directors at that</p> <p>20 time?</p> <p>21 MR. BURKE: Objection, foundation.</p> <p>22 MR. MAUNDRELL: Objection,</p> <p>23 foundation. Document speaks for itself as</p> <p>24 well.</p> <p>25 MR. BURKE. It also calls for</p> <p>Page 219</p>	<p>Page 220</p>
<p>1 that required cooperation on the part of both</p> <p>2 of the law firms involved, as well as the</p> <p>3 principals themselves, the knowledgeable</p> <p>4 officers and directors.</p> <p>5 Q. Was a committee ever formed to</p> <p>6 effectuate the merger?</p> <p>7 MR. BURKE: Committee?</p> <p>8 A. A committee of whom? By whom?</p> <p>9 Q. Of anyone involved with the</p> <p>10 merger, for example, KMK attorneys, Dinsmore</p> <p>11 attorneys, Provident people.</p> <p>12 MR. BURKE: A committee?</p> <p>13 Q. Yes.</p> <p>14 MR. BURKE: Objection to form. I</p> <p>15 have no idea what that means.</p> <p>16 A. Yes. I don't know really what you</p> <p>17 mean, either. I -- not to my knowledge, but</p> <p>18 there could have been.</p> <p>19 Q. Okay. What was Mr. Kreider's role</p> <p>20 with respect to this merger?</p> <p>21 A. Minimal. He was the -- as, again,</p> <p>22 I've testified previously, he was the head of</p> <p>23 the securities department.</p> <p>24 Q. Right.</p> <p>25 A. And so as a -- in an oversight</p>	<p>1 speculation on the part of this witness. He's</p> <p>2 already testified to his role in this matter.</p> <p>3 A. No, it does not mean that.</p> <p>4 Q. Does that mean that there are</p> <p>5 eight directors -- eight OHSL directors at this</p> <p>6 time?</p> <p>7 A. No.</p> <p>8 MR. MAUNDRELL: Objection.</p> <p>9 Q. What does it mean?</p> <p>10 A. It means that, you know, one or</p> <p>11 more of the charter documents of the company,</p> <p>12 that is OHSL, permit the -- well, actually it</p> <p>13 says in the first sentence, certificate of</p> <p>14 incorporation. It says that the Board of</p> <p>15 Directors has the ability from time to time to</p> <p>16 determine how many directors there should be.</p> <p>17 And, therefore, the Board has the ability to</p> <p>18 change that.</p> <p>19 I don't know what further</p> <p>20 limitations there might have been. That would</p> <p>21 be speculation on my part, but sometimes there</p> <p>22 are minimums and maximums, but the certificate</p> <p>23 of incorporation permits the Board to set by</p> <p>24 resolution the number of directors.</p> <p>25 And the fact that the Board has</p>	<p>Page 221</p>

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1 set the number of directors at eight does not
 2 mean that there are necessarily eight serving
 3 actively at a given time, because you can
 4 always have vacancies.

5 Q. If there's a vacancy on the Board,
 6 do you believe it should be disclosed to the
 7 OHSL shareholders?

8 MR. MAUNDRELL: Objection. Asked
 9 and answered.

10 A. No.

11 Q. Okay. You can put that document
 12 to the side for a moment. Let's take a look at
 13 what has previously been marked as Plaintiff's
 14 Exhibit 16.

15 A. Mine is stapled on both ends so I
 16 can't open it. Okay. I've paged through it.

17 Q. Okay. Mr. Matthews, I think it's
 18 fair to say that Plaintiff's Exhibit 42
 19 provides a draft of some merger related
 20 documents and calls for comments --

21 A. I see Plaintiff's Exhibit 16 on
 22 the first page.

23 Q. Right. Well, what I was saying
 24 was. Plaintiff's Exhibit 42 calls for comments
 25 to be made

1 speculation, foundation.

2 A. Are you assuming that there was a
 3 procedure or that there should have been a
 4 procedure?

5 Q. Was there a procedure to share
 6 this document with members of the distribution
 7 list?

8 A. There would have been no reason to
 9 necessarily do that, so I -- no, I would say
 10 that there wasn't.

11 Q. Okay. What do you believe
 12 happened when this document was hand delivered
 13 to Mark Weiss?

14 MR. MAUNDRELL: Objection.

15 MR. BURKE: Objection to
 16 foundation. Calls for speculation.

17 A. I believe Mark would have taken
 18 this document and disposed of each of the
 19 comments in a way that he felt was prudent. In
 20 some cases discussing it with Provident people,
 21 in some cases discussing it with other lawyers
 22 in the firm, and in other cases going back to
 23 OHSL's attorneys and discussing comments with
 24 them.

25 Q. Did he ever discuss any of these

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1 A. That's not marked on mine.
 2 Q. Well, it is 42.

3 A. Are you referring to this document
 4 that begins at the bottom KMK 03960?

5 Q. Yes.

6 A. Okay.

7 Q. And my question is, KMK calls for
 8 comments with respect to the attached document.
 9 And in Plaintiff's Exhibit 16, they receive
 10 comments: is that fair?

11 A. Well, that's certainly what it
 12 appears, yes.

13 Q. Okay. Now, on Plaintiff's Exhibit
 14 16, which is the document you have in front of
 15 you, it appears that it was hand delivered to
 16 Mark Weiss. Do you see that?

17 A. I do.

18 Q. And the document states that it
 19 contains handwritten comments from Pat Condren
 20 and Ken Hanauer. Do you see that?

21 A. That I see, yes.

22 Q. Okay. What was the procedure for
 23 sharing this document with the distribution
 24 list when it was received by Mark Weiss at KMK?

25 MR. BURKE: Objection. Calls for

1 comments with you?

2 A. I don't think so.

3 Q. Can I direct your attention to
 4 page 151 by Bates number in the lower right?

5 A. Okay.

6 Q. Do you ever recall looking at this
 7 page with the handwritten notes?

8 A. I do not recall.

9 Q. Do you ever recall discussing with
 10 anyone the fact that Mr. Herron had resigned
 11 from the OHSL Board?

12 MR. BURKE: Objection. Asked and
 13 answered. You may answer it.

14 A. Yes

15 Q. And that's with Cliff Roe?

16 A. Well, I, I said it was -- I

17 thought it was either with Cliff or Charles
 18 Crowley.

19 Q. Okay. And that's just one
 20 discussion?

21 A. Yes.

22 Q. Okay. Other than that discussion,
 23 do you remember any other discussions about Mr.
 24 Herron's resignation?

25 A. No.

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1 Q. Do you remember any discussions
 2 about how the date July 31st, 1999, that
 3 appears on this page, was selected?

4 MR. BURKE: Objection. Asked and
 5 answered.

6 A. No.

7 Q. Do you ever remember receiving a
 8 copy of this document yourself, Plaintiff's 16?

9 A. No.

10 Q. Do you believe that you would have
 11 received a copy of Plaintiff's Exhibit 16 in
 12 the normal course of business?

13 MR. BURKE: Objection. Calls for
 14 speculation.

15 A. No.

16 Q. Okay. You can put that aside for
 17 the moment. Let me hand you what has been
 18 previously marked as Plaintiff's Exhibit 23.

19 A. Okay.

20 Q. Have you seen this document
 21 before?

22 A. I don't have a specific
 23 recollection of this document.

24 Q. Okay. That was all --

25 A. I see that my name is on the

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1 extent. I don't think that some of these
 2 people would have spent any appreciable time on
 3 this.

4 Q. Okay. We talked about Mr. Kreider
 5 and Mr. Rosenberg being very senior people in
 6 their departments.

7 A. I doubt that they spent any time
 8 looking at this, but that's purely speculation.

9 Q. Okay. If they did, they would
 10 have billed for their time, correct?

11 MR. MAUNDRELL: Objection.

12 MR. BURKE: Objection.

13 A. I don't know.

14 Q. During the time you worked on this
 15 transaction, did you take notes?

16 A. Oh, I'm sure I did.

17 Q. Did you send e-mails?

18 A. Again, I'm sure I did. I don't
 19 have any specific recollection as to the
 20 content of those e-mails, but --

21 Q. At any point after litigation was
 22 instigated in any OHSL-Provident related
 23 cases, were you asked to preserve your notes?

24 MR. BURKE: Objection. Time
 25 frame

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1 distribution list.

2 Q. Right.

3 A. But I do not specifically recall
 4 this document.

5 Q. Right. A long time ago. Do you
 6 believe that you received this document?

7 A. Yes.

8 Q. What was the purpose for this
 9 document being circulated to the distribution
 10 list?

11 MR. BURKE: Objection. Calls for
 12 speculation. You may answer.

13 A. Being on the distribution list, I
 14 would say the purpose is as stated in the cover
 15 letter.

16 Q. And that is essentially to
 17 facilitate the finalizing of the document,
 18 right?

19 A. Right, because of the fact that
 20 there were blanks in the document.

21 Q. Was it your expectation that
 22 everyone who received this on the distribution
 23 list reviewed it to some extent?

24 A. When you say "reviewed," I think
 25 everybody would have taken note of it to some

1 MR. GILLIGAN: Don't refer to any
 2 conversations with counsel.

3 A. Well, maybe this will help you
 4 understand. I don't keep any personal notes
 5 with regard to any client matters, so to the
 6 extent that any of my notes existed and were in
 7 the files, I don't keep either the notes or the
 8 physical files, okay, so --

9 Q. Whatever notes you --

10 A. I would not have had possession of
 11 any notes. And I don't recall being asked
 12 about notes, because I didn't have any notes.

13 Q. Okay. So whatever notes you had
 14 went in the file, the file went off to the
 15 filing system somewhere?

16 A. Right.

17 Q. And after litigation was
 18 instituted, do you ever recall being asked to
 19 preserve or to produce materials related to the
 20 litigation?

21 MR. GILLIGAN: Well, those are two
 22 different questions. Were you asked to
 23 preserve?

24 Q. Okay.

25 MR. GILLIGAN: Or to produce?

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1 Q. Yes.
 2 MR. GILLIGAN: Do you want to take
 3 it one at a time?
 4 A. Well, I don't have a recollection
 5 as to whether I was asked to -- it probably
 6 would -- again, would have been pretty
 7 insignificant to me because I don't keep them
 8 anyway, so I -- I wouldn't have had anything to
 9 preserve or to produce.
 10 Q. Well, I was down at KMK the other
 11 day --
 12 A. Yes.
 13 Q. -- looking at documents.
 14 A. Um-hmm.
 15 Q. And I came across an e-mail from
 16 someone at Provident going out to I guess
 17 everyone. And it said, please preserve all of
 18 the documents related to the restatement,
 19 interpret this as broadly as possible. Do you
 20 ever recall seeing anything at KMK similar to
 21 that?
 22 A. I don't recall, no.
 23 Q. I think I have a clear
 24 understanding of what happened to your notes
 25 being placed in the file and going to the file

1 you just did it out of curiosity?
 2 A. Yes, correct.
 3 Q. And if I understood you correctly,
 4 you said you deleted your e-mails related to
 5 the merger transaction shortly after the
 6 closure of the merger between OHSL and
 7 Provident, correct?
 8 A. No. I would say that usually I do
 9 not retain my e-mails, because we have a limit
 10 on how many e-mails we're permitted to retain
 11 and at some point they may have been deleted.
 12 All I know is that yesterday I did not have any
 13 e-mails and I looked for them.
 14 Q. Do you think you deleted any
 15 e-mails after litigation was initiated in
 16 November of 1999?
 17 MR. BURKE: Counsel, you know
 18 that's an improper question. First of all,
 19 that's a case that you voluntarily dismissed,
 20 so there's no obligation to preserve until
 21 after November of 1999.
 22 Secondly, there was no discovery
 23 request to this person or KMK from that
 24 litigation, so again I object to that question
 25 as misleading. You may answer.

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1 room. What happens to the e-mail and the other
 2 information that you may have maintained in an
 3 electronic form?
 4 A. Well, my e-mail is deleted on a
 5 fairly regular basis. I did, prior to this
 6 deposition, out of curiosity more than anything
 7 else, check yesterday to see if I had any
 8 e-mails on my computer relating to this and
 9 couldn't find any, so I'm assuming that I
 10 deleted them in the ordinary course sometime
 11 shortly after the transaction was completed.
 12 I'm talking about the electronic copies --
 13 Q. Right.
 14 A. -- on my computer. I've already
 15 changed computers though twice since then, so
 16 that would also explain why there's nothing on
 17 the computer.
 18 Q. So if I understand your testimony
 19 correctly, you checked yesterday out of
 20 curiosity, and this is a computer twice removed
 21 from 1999, correct?
 22 A. Right. Because I didn't know if
 23 there was anything on our network that might be
 24 under my name.
 25 Q. But you weren't asked to do that,

1 A. I would have -- if I had been told
 2 not to delete something, I wouldn't have
 3 deleted it. But like I said, I do delete my
 4 e-mails because it clutters up my e-mail box,
 5 so at some point -- it could have even been
 6 during the transaction or after the
 7 transaction, I don't know.
 8 All I know is that when I checked,
 9 and I do specifically recall checking
 10 yesterday, because again out of curiosity I
 11 wanted to know, I didn't see anything. So
 12 that's a -- that's all I know about e-mails. I
 13 have no specific recollection about even
 14 sending an e-mail in this case, although maybe
 15 we did send some. I just don't know.
 16 Q. Do you have any specific
 17 recollection of litigation being pending before
 18 the transaction closed?
 19 MR. BURKE. Objection. Asked and
 20 answered.
 21 A. I believe that Mark Magee told me
 22 that there was some litigation about the
 23 transaction at some point. I couldn't pin the
 24 time frame down for you, but I do have a
 25 recollection that he told me that.

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1 Q. Do you believe that you deleted an
 2 e-mail after Mr. Magee told you that?
 3 MR. BURKE: Objection. Asked and
 4 answered.

5 A. I don't recall. I --

6 Q. Can I direct your attention to
 7 page four of this document?

8 A. Sure.

9 MR. BURKE: Exhibit 23? Is that
 10 what we're on?

11 Q. Yes. Actually it's this page.

12 A. Oh.

13 MR. MAUNDRELL: What, 266?

14 Q. It's cut off at the bottom, it
 15 looks like 268.

16 MR. BURKE: 268.

17 Q. Okay. Do you see where it says
 18 Recommendation to Stockholders?

19 A. I do.

20 Q. Do you see that someone apparently
 21 circled that?

22 A. Yes, I do.

23 Q. Do you have any idea why someone
 24 may have circled it?

25 MR. BURKE: Objection. Calls for

1 would not have been within his knowledge or
 2 expertise, so I would say no.

3 Q. What I'm trying to get at is, who
 4 was in charge of assembling the overall
 5 document and putting it together, even if it
 6 wasn't his or her particular area of expertise.
 7 Was there such a person at KMK?

8 A. Oh, I see what you're saying. In
 9 terms of the ministerial act of assembling the
 10 various pieces?

11 Q. Yes. Let's take the ministerial
 12 acts first.

13 A. That would have been Mark.

14 Q. Okay. And this is not -- this
 15 does not go to ministerial acts, but who was in
 16 charge of saying that a particular section of
 17 the document was final? For example, were you
 18 the person who was in charge of saying that The
 19 Merger Agreement was final?

20 MR. BURKE: The Merger Agreement?
 21 I don't follow you.

22 A. No, I wasn't.

23 MR. BURKE: Objection to form.

24 Q. Okay. Who was in charge of saying
 25 that the plan of merger was final?

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1 speculation.

2 A. I have no idea.

3 Q. Do you ever remember discussing
 4 this particular page and this particular circle
 5 at or around September 1st, 1999?

6 A. No.

7 Q. Is it fair to say that comments
 8 and input on the merger documents were coming
 9 back to KMK and Mark Weiss?

10 A. What merger documents are you
 11 referring to?

12 Q. Proxy materials, the registration
 13 statement and other merger -- The Merger
 14 Agreement.

15 A. After The Merger Agreement had
 16 been signed?

17 Q. Yes.

18 A. Yes.

19 Q. And was Mark Weiss the person most
 20 knowledgeable about the assembling of the
 21 entire document?

22 MR. BURKE: Objection. Calls for
 23 speculation.

24 A. I would. I would say not. I mean,
 25 there were areas of this document clearly that

1 A. The two principals, which would
 2 have been PFGI and OHSL Financial.

3 Q. And which people --

4 A. In other words, when our clients
 5 decided -- when our client, PFGI, and when
 6 Dinsmore's client, OHSL, were satisfied that
 7 the document was in a proper and correct form
 8 and included all of the pertinent provisions
 9 that needed to be included, then it was final
 10 and then it was signed. And so that's
 11 ultimate -- ultimately the responsibility was
 12 with the two respective clients.

13 Q. And what person did that
 14 responsibility lie with at PFGI?

15 A. Bob Hoverson eventually.

16 Q. And what person did that lie with
 17 at OHSL?

18 A. I don't know. I, I -- I don't
 19 know. I can make an assumption.

20 MR. GILLIGAN: No.

21 A. But I guess I'm not allowed to do
 22 that.

23 MR. GILLIGAN: Just what you know.

24 Q. It would be either Ken Hanauer or
 25 Norbert Brinker, correct?

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1 MR. MAUNDRELL: Objection.
 2 MR. BURKE: Objection. Asked and
 3 answered.

4 A. I don't know. It could be the
 5 whole Board.

6 MR. BRAUTIGAM: Okay. Let's take
 7 a short break.

8 (Brief recess.)

9 BY MR. BRAUTIGAM:

10 Q. Mr. Matthews, did you form an
 11 opinion with respect to the quality of the work
 12 that McDonald & Company did with respect to the
 13 transaction?

14 MR. BURKE: Objection. Calls for
 15 speculation.

16 A. No.

17 Q. Do you know that McDonald &
 18 Company was covering Provident stock at the
 19 same time they were advising OHSL on the deal?

20 A. No.

21 Q. Do you know that McDonald &
 22 Company had issued a buy recommendation of
 23 Provident stock at a relevant point in the
 24 deal?

25 MR. MAUNDRELL: Objection.

1 MR. BURKE: Objection to form.
 2 And there's no such thing as an OHSL
 3 shareholder in March 2003.

4 A. I think I also already told you
 5 that I was not really familiar with the 2003
 6 restatement except that there was one. But I
 7 know nothing of the details of that restatement
 8 or why, or why it was done or its import, so --

9 Q. You understand that Provident
 10 stock lost a significant amount of value in a
 11 short amount of time, correct?

12 A. No. I don't own any Provident
 13 stock and I don't follow it.

14 MR. GILLIGAN: Obviously not
 15 prepared for the deposition.

16 MR. BRAUTIGAM: Did you get Mr.
 17 Gilligan's comments?

18 COURT REPORTER: Yes.

19 THE WITNESS: Mr. Gilligan, was I
 20 supposed to buy some stock?

21 MR. GILLIGAN: No.

22 MR. BRAUTIGAM: Mr. Matthews, I
 23 thank you for your time and I have nothing
 24 further.

25 THE WITNESS: Great. Thank you.

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1 MR. GILLIGAN: Excuse me, what's
 2 that? What's relevant? What's the time? Give
 3 that --

4 A. I didn't know at any time, Mike.

5 Q. Okay.

6 MR. GILLIGAN: Okay. Well, then
 7 it doesn't matter.

8 Q. Do you think that's a potential
 9 conflict of interest?

10 MR. MAUNDRELL: Objection.

11 MR. BURKE: Objection. They're
 12 not defendants. Go sue them. You can answer
 13 it.

14 A. No.

15 MR. GILLIGAN: He's asking you as
 16 an expert apparently, so --

17 A. Doesn't trouble me at all.

18 Q. Even given the way the transaction
 19 was structured?

20 MR. BURKE: Objection, form.

21 A. I think I already answered that.
 22 It doesn't trouble me.

23 Q. Okay. Do you believe that the
 24 March 2003 restatement had an effect on the
 25 OHSL shareholders?

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TIMOTHY B. MATTHEWS, ESQ.

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(Deposition concluded at 4:00 p.m.)